**COMMONWEALTH OF VIRGINIA, ex rel.**

**STATE CORPORATION COMMISSION**

**v.** **CASE NO. PUE000470**

**COLUMBIA GAS OF VIRGINIA, INC.,**
**Defendant**

## REPORT OF MICHAEL D. THOMAS, HEARING EXAMINER

**April 25, 2001**

## HISTORY OF THE CASE

On August 2, 2000, Columbia Gas of Virginia, Inc. (the "Company") notified the Commission's Division of Energy Regulation (the "Staff") that the Company had begun that day adjusting residential customer billings with a Gas Temperature Compensation Factor. The temperature compensation factor would be applied to the bills of all residential customers who had outside non-temperature compensated gas meters. In support of the measure, the Company stated that imposing the temperature compensation factor would provide customers with a more accurate bill, standardize the customer billing process, and reduce unaccounted for gas in the Company's system.

On August 3, 2000, the Staff notified the Company by letter that its review of the Company's filed tariff failed to find any provision authorizing the imposition of a temperature compensation factor on low-pressure residential customers. The Staff requested the Company to discontinue the practice until it could demonstrate that it had authority to apply such a factor.

By letter dated August 9, 2000, the Company responded that its review of its tariff confirmed that nothing in its tariff precluded the application of a temperature compensation factor on its residential customers. Additionally, the Company further justified its need for such a factor.

On August 23, 2000, the Staff filed a Motion Requesting Issuance of a Rule to Show Cause. The Staff requested that the Commission, pursuant to its authority under § 56-35 of the Code of Virginia, issue a Rule to Show Cause against the Company for it to show cause, if any, why it should not be held in violation of §§ 56-234, 56-236 and 56-237 of the Code of Virginia for failing to comply with its filed tariffs, and why, because of the Company's failure to cease such violations, the Commission should not impose fines and penalties pursuant to § 12.1-13 of the Code of Virginia and enjoin the Company from further violations of §§ 56-234, 56-236 and 56-237 of the Code of Virginia. The Staff further requested the issuance of a temporary injunction against the Company, upon notice and hearing, enjoining the Company from further engaging in the foregoing alleged conduct pending the Commission's final determination in this matter. In support of its motion, the

Staff argued the Company's applicable tariff made no provision for the application of a temperature compensation factor to residential customers' bills.

The Commission issued the requested Rule to Show Cause (the "Rule") on August 25, 2000. The matter was assigned to a hearing examiner to determine whether the requested temporary injunction should be issued. In addition, the Commission scheduled a hearing for September 11, 2000, for the Company to show cause why it should not be enjoined from further violations of §§ 56-234, 56-236 and 56-237 of the Code of Virginia, and penalized pursuant to § 12.1-13 of the Code of Virginia. The Company was directed to file a responsive pleading to the Rule on or before September 5, 2000.

The Company filed its Response to the Rule on September 5, 2000. The Company denied that it failed to follow its tariff in violation of §§ 56-234, 56-236 and 56-237 of the Code of Virginia. The Company further stated that it had voluntarily terminated the imposition of the temperature compensation factor on August 29, 2000, pending resolution of this matter, but it reserved the right to recommence the practice in the absence of a Commission resolution of this matter. The Company provided additional support for its imposition of a temperature compensation factor on its residential customers.

On September 8, 2000, the Staff filed a Reply and a Motion Requesting Cancellation of Hearing. In the Motion, the Staff joined with the Company in requesting that the September 11, 2000, hearing be cancelled. The request was granted by Commission Order dated September 8, 2000.

By Hearing Examiner's Ruling entered on November 20, 2000, this matter was set for hearing on February 15, 2001, and a procedural schedule was established for the filing of prefiled testimony and evidence with the Commission.

The hearing was convened as scheduled. Arlen K. Bolstad, Esquire, appeared on behalf of the Staff. Kodwo Ghartey-Tagoe, Esquire, and James S. Copenhaver, Esquire, appeared on behalf of the Company. The Staff presented the testimony of Cody D. Walker, assistant director of the Division of Energy Regulation. The Company presented the testimony of Robert E. Horner, regulatory policy manager for Columbia Gas of Virginia, Inc. At the conclusion of the hearing, the parties were afforded an opportunity to file post-hearing briefs. The Company and the Staff filed post-hearing briefs on March 22, 2001. A copy of the transcript is included with this Report.

## SUMMARY OF THE EVIDENCE

The Staff presented its case first. Mr. Walker adopted his prefiled testimony and provided additional live testimony. In his prefiled testimony, Mr. Walker adopted the affidavit previously filed as Exhibit A to the Staff's Motion Requesting Issuance of a Rule to Show Cause. (Ex. CW-1, at 1).

Mr. Walker addressed several points in his affidavit. First, the Company's revised tariff, Second Revised Sheet No. 359, makes no express provision for the application of a temperature compensation factor to low-pressure residential customers. Second, an average residential customer

using 612 CCF of natural gas per year would see an annual increase of $18.54 in his gas bill as a result of implementation of the temperature compensation factor. Third, the temperature compensation factor would increase an average residential customer's annual consumption from 612 CCF to 635 CCF. This would result in an increase of the revenue requirement for the residential customer class of $2.3 million, which would result in an increase in non-gas revenue for the Company of approximately $796,882. Fourth, the Company began applying a similar temperature compensation factor to low-pressure commercial accounts in May 1998. At the time, the Staff questioned the Company on this practice. Since the implementation of the temperature compensation factor to low-pressure commercial accounts coincided with the review of the Company's rates in Case No. PUE980287, the Staff proposed, and the Commission accepted, an adjustment to the Company's billing determinants to reflect the application of a temperature adjustment factor to these accounts. Finally, Mr. Walker argued the temperature compensation factor violates the Company's filed tariff and is inconsistent with the proper application of the Company's approved rates. The Company's approved rates were predicated on residential billing determinants that did not reflect the application of a temperature compensation factor. Consequently, the application of such a factor outside of a rate proceeding would increase the Company's revenues without Commission approval or a public hearing. (Ex. CW-1, at attached Exhibit CDW-1).

In his prefiled testimony, Mr. Walker stated that the Staff raised with the Company the issue of its application of a temperature compensation factor to low-pressure commercial customers during the fall of 1998. The Staff asked the Company to explain how the temperature compensation factor was consistent with the Company's filed tariff. At that time, the Company responded that while its tariff did not specifically provide for a temperature compensation factor, the Company believed it was not precluded from applying such a factor. Mr. Walker testified the Staff did not pursue the issue with the Company. The Staff believed adjusting the billing determinants for low-pressure commercial accounts in the Company's then pending rate case (*Application of Columbia Gas of Virginia*, Case No. PUE980287, 1999 S.C.C. Ann. Rep. 410) made the issue moot, and the Staff did not anticipate that the Company would apply such a factor to residential customers. (Ex. CW-1, at 2-3).

Mr. Walker disagrees with the two primary arguments raised by the Company in its Response to the Rule. First, Mr. Walker argues the language of the Company's tariff does not support its position in this case. The tariff states: "[e]xcept as otherwise indicated in an applicable schedule, the quantity of gas delivered to each Customer shall be ascertained by the readings of the meter furnished by the Company." Mr. Walker argues that "consumption" is determined by a meter reading, not by an adjusted meter reading. Mr. Walker states that the word "ascertained" used in the tariff means, "to find out with certainty." He argues that applying a temperature compensation factor from a table of unknown origin to a customer's meter reading to derive the customer's consumption does not determine the customer's consumption "with certainty." Mr. Walker argues that if the tariff is ambiguous it should be construed in favor of the customer. Second, Mr. Walker argues the application of a temperature compensation factor to residential customers does not eliminate disparate treatment between those customers who have temperature compensating meters and those who do not. In the Staff's view, since the temperature compensation factor is based on a table of unknown origin, it merely substitutes one type of disparate treatment for another. While the Staff acknowledged that the Company's residential customers are currently subject to unequal

treatment, Staff believes the only true method of treating customers equitably would be to install temperature compensating meters on all similarly situated customers. (Ex. CW-1, at 5-6).

Finally, in his prefiled direct, Mr. Walker testified the Company's attempt to validate the accuracy of the Monthly Flowing Gas Temperatures for Appalachian Area (the "Appalachian Table") through a sampling of 100 of its gas meters showed that the table produced flowing gas temperatures that were on average lower than those in the sample group. Mr. Walker argues the use of the Appalachian Table would produce higher estimates of natural gas consumption and consequently higher bills for the Company's customers. The Staff argues that the use of the Appalachian Table, or any other similar table, simply substitutes one type of inaccuracy for another in calculating a customer's bill. (Ex. CW-1, at 6-7).

Mr. Walker supplemented his prefiled direct testimony at the hearing. Mr. Walker explained that gas meters are typically calibrated to a standard temperature of 60 degrees. Since the actual density of gas will expand or contract depending on the outside air temperature, when the temperature of the flowing gas differs from 60 degrees the meter may inaccurately record the amount of gas flowing through the meter. The temperature compensation factor is intended to make the meter readings, and consequently the Company's billings, more accurate. The Company has a formula, which it uses in conjunction with the Appalachian Table, to determine what the temperature compensation adjustment would be. If the flowing gas temperature is less than 60 degrees the adjustment would be greater than one, and if the flowing gas temperature is more than 60 degrees the adjustment would be less than one. The customer's monthly gas consumption, as shown by the meter, is multiplied by the temperature compensation factor to arrive at the customer's ultimate consumption for which he is billed. (Tr. at 18-21).

Mr. Walker reiterated his position that the Company's tariff does not specifically provide for a temperature compensation factor for low-pressure residential customers. However, he further noted the Company's tariff, Original Sheet No. 356 at Paragraph 2.1(c), specifically permits the Company to apply a temperature compensation factor to high-pressure commercial accounts. (Tr. at 21-22).

In the Company's 1998 rate case, the Staff adjusted the Company's billing determinants for low-pressure commercial customers; however, Staff made no such adjustments for low-pressure residential customers. The Company gave no indication to the Staff that it planned to apply such a factor to residential customers. Mr. Walker testified in detail how the billing determinants were used to design rates in that case. He believes the use of a temperature compensation factor would increase the Company's revenues, even though the $2.3 million in increased revenues generated by the use of the temperature compensation factor would be offset by a $1.1 million purchased gas adjustment, the Company would net approximately $800,000 in non-gas revenue that would go to the Company's bottom line. Mr. Walker testified these additional revenues were not authorized in the 1998 rate case. If at some point the Commission determined the Company was overearning as a result of the temperature compensation factor, there is no mechanism in place to refund those overearnings to the Company's customers. (Tr. at 22-30).

On cross-examination, Mr. Walker testified that the same tariff provision covers the Company's low-pressure commercial customers that were at issue in the 1998 rate case, and the low-pressure residential customers that are at issue in this case. In hindsight, Mr. Walker believes

Staff made a mistake in the 1998 rate case by adjusting the Company's billing determinants to address the Company's application of a temperature compensation factor to low-pressure commercial customers. The Staff should have addressed the tariff language itself. (Tr. at 31-32).

Mr. Walker further testified he was unsure how long the Company had been using the Appalachian Table to calculate temperature compensation factors for industrial and large commercial customers. The Company began using the Appalachian Table before Mr. Walker began working at the Commission. Mr. Walker believes a temperature compensation factor, if used properly, would decrease the Company's unaccounted for gas. In the case of low-pressure residential customers, this would result in a reduction of approximately 287,891 MCF in unaccounted for gas. Mr. Walker compared the Company's average flowing gas temperature with the Appalachian Table, and while the temperature curves may appear similar, there is a difference of approximately 12.8% during the winter months and 4.3% during the summer months. Although the Company has been using the Appalachian Table for some time, Mr. Walker believes that, if the Staff were examining the table today, they would either seek to revise it, develop some other mechanism for temperature compensation, or do away with a temperature compensation factor altogether. (Tr. at 34-35, 39, 46-48).

Mr. Walker testified that although the Company's customers who have temperature-compensating meters and those with non-temperature compensating meters are subject to disparate treatment, this is only one of many ways they may be subject to such treatment. All other things being equal, a customer with a non-temperature compensating gas meter would pay less for gas than a customer with temperature compensating gas meter. (Tr. at 44-45).

At the conclusion of the cross-examination of Mr. Walker's direct testimony, the Company requested that the Hearing Examiner take judicial notice of *SCC v. Columbia Gas of Va., Inc.*, Case No. PUE000388, another case pending before the Commission involving the interpretation of a different provision in the Company's tariff. The Hearing Examiner granted the Company's request. (Tr. at 48-51).

In his prefiled rebuttal testimony, Mr. Walker covered many of the same points concerning the use of the Appalachian Table as in his previous testimony. (Ex. CW-6, at 1-5). He further testified the Annual Informational Filing process only allows the Commission to identify problems that have already occurred and to correct them prospectively. In this case, the Company would have collected almost $1,000,000 in increased non-gas revenues before the Commission would have an opportunity to adjust the Company's rates, but only on a prospective basis. (Ex. CW-6, at 5-6).

In his prefiled direct testimony, Mr. Horner adopted the Company's Response to the Rule to Show Cause. He further summarized the Company's position that there is no provision in the Company's tariff that precludes the application of a temperature compensation factor to low-pressure accounts. The Company believes that absent such a provision, a temperature adjustment factor should be applied to low-pressure residential accounts to allow the Company to properly account for volumes of gas delivered to customers without temperature compensating meters and to treat all of its customers, those with and without temperature compensating meters, equitably. The Company believes the temperature compensation adjustments will allow it to more accurately measure consumption and in turn, issue more accurate bills. More accurate billing of customer

consumption would reduce unaccounted for gas, and reduce the Company's per unit gas costs for the residential class. (Ex. RH-5, at 2).

Mr. Horner took issue with portions of Mr. Walker's testimony. He argued against Mr. Walker's position that any ambiguity in the Company's tariff should be construed against the Company and in favor of the Company's customers. Mr. Horner believes Mr. Walker failed to consider that customers with temperature compensating meters, approximately 40,574 residential customers, are currently paying more for gas service and would benefit from the application of a temperature compensation factor to customers with non-temperature compensating meters. Mr. Horner quantified the cost reduction that would be achieved for these customers. An average residential customer with a temperature compensating meter who consumes 63.5 Mcf of gas would see a reduction in his annual gas bill of $8.89. (Ex. RH-5, at 3).

Mr. Horner further testified that it would be cost prohibitive to install temperature compensating gas meters for all of its customers who have non-temperature compensating gas meters to address any perceived inequity between the Company's customers. In recent years, the Company has purchased only temperature compensating gas meters, which have become the standard in the industry. The Company is planning to replace its non-temperature compensating gas meters over time. The Company believes the application of the temperature compensation factor achieves the same result as replacing a non-temperature compensating gas meter at a fraction of the replacement cost. Mr. Horner disagrees with Mr. Walker that using a temperature compensation factor merely substitutes one type of inaccuracy for another, since using the factor produces a more accurate measurement of the gas consumed than is reported by a non-temperature compensating gas meter. (Ex. RH-5, at 4).

Responding to the Staff concerns about the accuracy of the Appalachian Table, Mr. Horner testified the Company twice validated the temperature data in the Appalachian Table. The first validation incorporated the temperature statistics for all the Columbia Distribution Companies, and the second considered Virginia specific data. The Company found that the variation between the Appalachian Table and its two studies was within the ± two percent tolerance the Company specifies in its tariff for its gas meters. Regardless of the origin of the Appalachian Table, the Company believes the Table is as accurate as the temperature data it developed, and appropriate to use in calculating gas consumption for customers without temperature compensating gas meters. The Company would be willing to use a different set of temperature compensation factors if those were determined to be more accurate than the Appalachian Table. Finally, Mr. Horner testified the Staff has not questioned the use of the Appalachian Table for determining gas consumption for low-pressure or high-pressure commercial customers. Mr. Horner was unsure of the exact date the Company began using the Appalachian Table, but he believes it has been since 1956, the date shown on the Table. (Ex. RH-5, at 4-5; Tr. at 56-58).

Responding to Mr. Walker's testimony that the application of a temperature compensation factor results in an $800,000 increase in non-gas revenue for the Company, Mr. Horner testified the Company is subject to an Annual Informational Filing with the Commission. If an earnings test showed that the Company's revenues exceeded the range set by the Commission, the Commission could require the Company to write off a regulatory asset. If there were additional earnings and no

other regulatory assets that could be written off, the Commission could turn the Annual Informational Filing into a rate case to reduce the Company's rates. (Tr. at 59-60).

On cross-examination, Mr. Horner testified the additional $800,000 in non-gas revenue that would be earned by the Company would not be subject to refund to the Company's customers, if it was later determined the Company exceeded an earnings test. (Tr. at 60-62).

On further cross-examination, Mr. Horner testified there is no specific reference in the Company's tariff permitting the application of a temperature compensation factor to low-pressure residential customers. (Tr. at 63).

Responding to questioning from the bench, Mr. Horner testified the Company implemented the Gas Temperature Compensation Factor for a period of approximately three weeks in August 2000. The implementation of the factor during August, a generally hot month, resulted in a credit on residential customers' bills. If the Commission ultimately disallows the use of the factor, the Company would not bill its residential customers for the minimal revenues that it did not collect. (Tr. at 65-66).

## DISCUSSION

The sole issue to be decided in this case is whether the Company's practice of using a temperature compensation factor to calculate the gas consumption of its low-pressure residential customers is permitted by its filed tariff.[1]

The Company's tariff, Second Revised Sheet No. 359, § 2.2(a), provides:

> Low Pressure Accounts
>
> The Quantity of Gas Determined by Meter Reading
>
> Except as otherwise indicated in an applicable schedule, the quantity of gas delivered to each Customer shall be ascertained by the readings of the meter furnished by the Company. The Company will read the meter once each month. As to any Customer whose meter is unable to be read in a month, the consumption for the month shall be determined by calculation on the basis of the Customer's previous usage considering factors such as variations in weather, number of days in the period, the trend in seasonal usage, etc., in

[1] There were several other issues raised by the parties in this case: (1) whether the Company's residential customers are subject to disparate treatment; (2) whether the Appalachian Table is accurate; (3) whether the Appalachian Table or some other table should be used to compensate for the difference in flowing gas temperatures; and (4) whether temperature compensation should be permitted at all. There is no need to decide these issues in this case. They should be addressed in a future rate case where the issues may be fully developed by the parties.

> order to provide as nearly accurate a bill as possible without actually reading the meter.

Ex. CW-1, Attachment 2.

The positions of the parties are fairly straightforward. The Company argues that its practice is permitted by the language of its tariff; that it does not seek to change its tariff; that it is applying its tariff as it was filed; and that, since the Company's last rate case when the Commission addressed temperature compensation for low-pressure commercial customers covered by the same tariff provision, it has consistently applied its tariff. The Company argues the Commission has not barred it from making temperature compensation adjustments for low-pressure commercial customers even though low-pressure commercial customers are covered by the same tariff as low-pressure residential customers. The Company argues that while the language of its tariff does not explicitly mention the application of a temperature compensation factor, it is broad enough to allow the Company's use of such a factor. If the language of the tariff is broad enough to permit the application of a temperature compensation factor to low-pressure commercial customers, then it supports the application of a temperature compensation factor to low-pressure residential customers. Finally, the Company argues that, in using a temperature compensation factor, it is merely trying to "ascertain" the actual quantity of gas delivered to each of its residential customers. (Columbia's Post-Hearing Brief at 6-10).

The Staff, on the other hand, argues that the Company's tariff is a model of clarity; that the tariff makes no provision for the application of a temperature compensation factor to low-pressure residential customers; that following the Company's interpretation of the tariff would allow a gas company to add any charge to a customer's bill as long as the charge was tied to an actual gas meter reading; and that the additional $800,000 in annual non-gas revenues produced by the temperature compensation factor constitutes an unauthorized rate increase for the Company. (Staff's Post-Hearing Brief at 7-11).

Both the Company and the Staff have stated their positions if the Commission finds the tariff to be ambiguous. The Company argues the rule of reason should be applied in interpreting the tariff. In support of its argument, the Company cites *Commonwealth ex rel. Harvey v. Mecklenburg Electric Cooperative*, Case No. PUE820078, 1984 S.C.C. Ann. Rep. 380.[2] In that case, the Commission stated:

> [o]n the face of the tariff, it is unclear what constitutes a 'collection'. Hence we must apply the rule of reason in interpreting this tariff to embrace attempts to collect as well as collection visits where money is actually recovered. To interpret this tariff provision otherwise would mean that a

[2] This case involved the interpretation of Section 402-I of the Cooperative's tariff. The tariff provided, in part, that: "[i]f a bill is not paid within ten days after the date of the delinquent notice, the bill will be collected by personnel of the cooperative or service discontinued. In case of collection, a $15 collection fee will be charged. . . ." *Id.* at 381. Personnel from the Cooperative made a collection visit on the tenth day after the date a delinquent notice was sent to a customer. The customer advised the Cooperative's representatives that his check for the delinquent amount was in the mail. Thereafter, the Cooperative's personnel advised the customer that he was being charged $15.00 for the collection visit. The Commission found the language of the tariff to be ambiguous and confusing and ordered the Cooperative to clarify its tariff in accordance with the Commission's findings in the case.

> customer refusing payment after the Cooperative has incurred the cost of a collection visit could deprive the Cooperative of its collection fee. Collection fees are charged to cover the cost of making collections.

*Id*. at 381.

The Staff argues in favor of applying the standard set forth by the Virginia Supreme Court in *Smokeless Fuel Company v. The Chesapeake and Ohio Railway Company*, 142 Va. 355, 128 S.E. 624 (1925).[3] In that case, the Court held:

> [i]t is well settled and may be freely conceded that tariffs are to be construed according to their language, and that the intention of the framers is entitled to little, if any, consideration. Furthermore, in cases of doubt, the language of the tariff is to be construed most strongly against those who frame it.

*Id*. at 371.

The Court in *Smokeless Fuel* provided further guidance for the interpretation of written tariffs. The Court went on to state:

> [s]ubject to these qualifications, the interpretation of a written tariff stands upon no different footing from that of other written instruments. Nontechnical words are to be given their usual and ordinary signification, and the instrument is to be read as a whole, and if apparent inconsistencies can be reconciled they should be, in order to give full effect to the language used. It is also entirely legitimate, in seeking to ascertain the meaning of the language used, to consider the end in view, the object sought to be accomplished by the making of the instrument. If in these circumstances the language of a tariff is fairly susceptible of a reasonably plain meaning, that construction should be put upon it. It is not the part of the judicial expositor to inquire whether or not, by strained or forced interpretation of separate words or paragraphs, considered disconnectedly, some other construction might not be possible.

*Id*. at 371.

[3] This case involved an action brought by The Chesapeake and Ohio Railway Company (the "C&O) against the Smokeless Fuel Company ("Smokeless Fuel") to recover for railcar demurrage. Smokeless Fuel used the C&O to ship coal to the Newport News Coal Exchange, Newport News, Virginia (the "Exchange"). Smokeless Fuel was a member of the Exchange and was bound by the Exchange's tariff with the C&O. When coal was delivered to the Exchange, the Exchange would segregate the coal by quality, size, etc., but the coal remained on the railcar until it was loaded on a ship for further shipment. The C&O would submit one bill at the end of each month to the Exchange showing dates of arrival and release of cars, covering total demurrage accruing against the Exchange for that month. The Exchange would then calculate each member's proportionate share of the demurrage based on that member's car or tonnage days' detention. The Exchange would report these totals to the C&O, and the C&O would then directly bill each member. A dispute arose over language in the tariff concerning when a railcar was considered released and demurrage charges ceased. The Trial Court held for Smokeless Fuel and the Virginia Supreme Court reversed and remanded the case.

Although the Virginia Supreme Court has not recently addressed the issue of interpretation of tariff language, the Court has consistently applied the "plain meaning rule" to the interpretation of contracts and the interpretation of statutes. *See*, *Marriott Corp. v. Combined Properties*, 239 Va. 506, 512, 391 S.E.2d 313, 316 (1990) (Where the terms of an agreement are clear and unambiguous, the language used will be taken in its ordinary signification, and the plain meaning will be ascribed to it.); *Brown v. Lukhard*, 229 Va. 316, 321, 330 S.E.2d 84, 87 (1985) (If the language of a statute is clear and unambiguous, there is no need for construction by the court; the plain meaning of the statute will be given it.).

Applying the "plain meaning rule" of construction to the Company's tariff, I find the language of the tariff does not permit the Company to adjust its low-pressure residential customers' gas bills with a temperature compensation factor, nor does it permit the Company to adjust its low-pressure commercial customers' bills, covered by the same tariff language, with a temperature compensation factor. The tariff states: "the quantity of gas delivered to each customer shall be ascertained by the readings of the meter furnished by the Company." The clear import of this language is that the customer is responsible for paying for the quantity of gas delivered by the Company as shown by his gas meter reading. Nowhere does it state in the tariff that a temperature compensation factor shall be applied to the gas meter reading. The application of a temperature compensation factor produces a different result for gas consumption than what is actually recorded on the customer's meter. The plain language of the tariff does not support the further adjustment of the customer's gas meter reading for billing purposes.

This finding creates some problems for the Company. During the Company's last rate case, the Staff adjusted the Company's billing determinants to reflect the application of a temperature compensation factor to low-pressure commercial customers. The Commission subsequently approved the Company's total revenue requirement, which was based in part on these billing determinants. However, after the Commission issued its final order in the case, the Company failed to amend its tariff to conform it to the outcome of the case. If the tariff establishes the contractual relationship between the Company and its customers for the provision of gas service, the Company has had no legal basis in its tariff for applying a temperature compensation factor to its low-pressure commercial customers. Although the Company and the Staff may have reached an agreement concerning the application of a temperature compensation factor to low-pressure commercial customers, which the Commission approved, unless and until the Company amends its tariff, the Company's low-pressure commercial customers are not contractually obligated to pay the additional gas charges that result from the application of the temperature compensation factor. The burden is on the Company, not the Commission, or its Staff, to ensure its tariff accurately reflects what the Commission has approved for rates and terms of service. In order to correct this problem, I recommend the Commission order the Company to amend its tariff within thirty days from the date of the final order in this case to reflect the application of a temperature compensation factor to low-pressure commercial customers.

It was clearly established in the record that from August 2, 2000 through August 29, 2000, the Company included a temperature compensation factor on its low-pressure residential customers' gas bills. It was likewise established in the record that none of the Company's residential customers suffered any harm from the imposition of the temperature compensation factor. The imposition of the temperature compensation factor during August resulted in a bill credit for the Company's

customers. Based on my previous finding that the Company's tariff does not support the imposition of a temperature compensation factor on low-pressure accounts, the Company's imposition of such a factor on its low-pressure residential customers constitutes a violation of §§ 56-236 and 56-237 of the Code of Virginia. Specifically, I find the Company violated § 56-236 of the Code of Virginia by failing to file with the Commission as part of its rate schedules copies of all rules and regulations that in any manner affect the rates charged or to be charged by the Company. Additionally, I find the Company violated § 56-237 of the Code of Virginia by failing to provide thirty days' notice to the Commission of a change in its rates, tolls, charges, rules or regulations. Finally, I find there is insufficient evidence to support a finding that the Company violated § 56-234 of the Code of Virginia by failing to provide reasonably adequate service and facilities at reasonable and just rates.

## FINDINGS AND RECOMMENDATIONS

Based on the testimony and evidence received in this case, and for the reasons set forth above, I find that the Company's tariff, Second Revised Sheet No. 359, § 2.2(a), does not permit the imposition of a temperature compensation factor on its low-pressure residential or commercial customers. Since the Company's residential customers actually benefited from the temperature compensation factor for the limited period it was in effect, I decline to recommend monetary penalties for the Company's violation of §§ 56-236 and 56-237 of the Code of Virginia. The injunctive relief recommended by the Staff is sufficient to deter future similar conduct by the Company.

I therefore ***RECOMMEND*** that the Commission enter an order that:

(1) ***ADOPTS*** the findings and recommendations contained in this Report;

(2) ***DIRECTS*** the Company to amended its tariff within thirty days of the final order in this case clarifying that the Company may impose a temperature compensation factor on its low-pressure commercial customers;

(3) ***ENJOINS*** the Company from future conduct that constitutes a violation of §§ 56-236 and 56-237 of the Code of Virginia; and

(4) ***PASSES*** the papers herein to the file for ended causes.

## COMMENTS

The parties are advised that any comments (Section 12.1-31 of the Code of Virginia and Commission Rule 5:16(e)) to this Report must be filed with the Clerk of the Commission in writing, in an original and fifteen (15) copies, within twenty-one (21) days from the date hereof. The mailing address to which any such filing must be sent is Document Control Center, P.O. Box 2118, Richmond, Virginia 23218. Any party filing such comments shall attach a certificate to the foot of

such document certifying that copies have been mailed or delivered to all counsel of record and any such party not represented by counsel.

Respectfully submitted,

_____

Michael D. Thomas
Hearing Examiner